

of life annuities, I certainly do not feel myself at liberty to do so, so long as the case of *Dorsey vs. Smith* stands, unreversed and unqualified by the high tribunal which decided it ; it would be, as it appears to me, unbecoming in this court, and inconsistent with that subordination to superior authority, so necessary to the orderly and harmonious administration of justice, to adopt a different principle. The principle there settled, and which, in my opinion, is entirely applicable to the question discussed in this case, must furnish the rule and control the decision ; unless, indeed, a mode exists of disposing of the cause, altogether irrespective of the rule, and in a way which will more certainly subserve the purposes of justice.

My opinion is, that such a mode does exist, and, therefore, without in any degree departing from the rule established in *Dorsey vs. Smith*, the rights of the parties in this cause may be settled in a way which will be perfectly just.

In *Dorsey vs. Smith*, from the circumstances of the cause, it became absolutely necessary to ascertain the value of the legacy purchased by Dorsey, before it became due. It was to be paid one year after the death of a party then living, and, consequently, its value at the date of the purchase depended upon the probable duration of the life of such party. The cause could only be settled by determining the value of this legacy and crediting the purchaser of it, for such amount as it should be ascertained to be worth, at the date of the purchase.

But the cause now under consideration, may be settled without determining the value of the annuity, and paying such value in money at this time. This may be effected by pursuing the the course adopted by the Court of Appeals, in the case of *Buchanan vs. Deshon*, 1 H. & G., 280 ; that is, by directing so much of the proceeds of the sale to be invested as will be necessary to raise the amount of the annuity during the life of Mrs. Mary Ayres—which, as heretofore declared, was the obvious intention of the mortgage from Robert H. Ayres and wife, to the complainant. The intention of that mortgage was to secure to the complainant the annual sum of one hundred and twenty dollars during the life of Mrs. Mary Ayres ; and, I am of opin-